

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. NO. 14180 of 2023

Palash Sarkar and Another

Vs.

Union of India and others

For the petitioners	:	Mr. Deepan Kumar Sarkar, Ms. Tiana Bhattacharya, Ms. Ananya Sinha, Ms. Prarthana Singha Roy
For the Union of India	:	Mr. Ramen Bose
For the State	:	Mr. Biswabrata Basu Mallick, Mr. Biman Halder
For the respondent no.4	:	Ms. Ujjaini Chatterjee
Hearing concluded on	:	12.10.2023
Judgment on	:	18.10.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioners are Prospective Adoptive Parents (PAPs) within the meaning of Section 2(49) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, "the JJ Act"). They registered on the designated portal "Child Adoption Resource Information & Guidance System (CARINGS)" on September 20, 2019. At that juncture their composite age was less than 110 years.
2. A Home Study Report (HSR) was uploaded on October 20, 2019 and remained valid for three years.

3. The petitioners received two siblings as their first referral from the category of “hard-to-place” children. The elder sibling was twelve years and the younger was ten years on that date. The children were under the foster care of the petitioners from October 4, 2022 to the month of September, 2022. The elder of the two was not willing to live with her younger sibling, for which the petitioners registered a disruption case and returned the children, although the younger child all along wanted to live with the petitioners, which intention is reciprocated by the petitioners as well.
4. On September 23, 2022, the Adoption Regulations of 2022 came into force upon notification by the Central Government.
5. During pendency of the disruption proceedings, the HSR of the petitioners expired on or about October 20, 2022. Respondent nos. 4 and 6, the Specialised Adoption Agencies of West Bengal and Odisha (since the children are from Odisha), took no efforts to revalidate the HSR within the stipulated time-line as per Regulation 30(3)(d) and Regulation 30(3)(m) as per the contention of the petitioners. The petitioners applied on November 17, 2022 for revalidation of the HSR as per Regulation 5(8). The composite age of the petitioners was then 109 years.
6. It is relevant to mention that a composite age of 110 years of the PAPs is the outer limit for taking hard-to-place children in adoption under the Regulations.
7. On January 4, 2023, the Central Adoption Resource Authority (CARA) informed the petitioners through e-mail that the disruption

proceedings were completed and they had been matched with the younger child and that subsequent steps for adoption were under process. Since the HSR was yet to be revalidated, the petitioners all along followed up the same.

8. However, on March 27, 2023, the respondent no.4-Agency decided not to recommend the case for re-adoption of the younger sibling on the ground that the PAPs had reserved siblings from Odisha and then returned them without counselling and the language used for the children was very harsh. The non-revalidation of the petitioners' HSR was also one of the grounds.
9. The respondent no.2, CARA, informed the petitioners on June 2, 2023 that their request for re-adoption of the younger child was not approved in view of the concerns raised by respondent nos. 3 and 4 that is the State Adoption Resource Authority (SARA) and the local adoption agency.
10. Challenging such decision, the petitioners have preferred the instant writ petition.
11. One of the grounds on which the respondent no.4 has objected is that the petitioners have now crossed the cumulative upper age limit of 110 years for taking adoption.
12. Learned counsel for the petitioners argues that the JJ Act is a beneficial piece of legislation enacted for the best interest of the child, adoptive parents and also the society at large. It is to ensure that all the needs of children are met and their basic human rights are protected. Section 3 of the Act incorporates the principles of best

interest whereby all decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child, in order to help the child to develop full potential. The principles of positive measures are incorporated in Section 3(vii) and non-waiver of rights in Section 3(xi).

- 13.** Regulation 3 of the 2022 Regulations lays down the fundamental principles governing adoption. Cause (a) states that the child's best interests are of paramount consideration. Regulation 63 also recognizes the need for relaxation of conditions regarding adoption to ensure a beneficial approach.
- 14.** Learned counsel for the petitioners points out that on October 10, 2023, learned counsel for the respondent no.4 took a fair stand that they would not stand in the way of any interpretation being given to the 2022 Regulations which would result in the petitioners being permitted to adopt the child.
- 15.** It is argued that the relevant date is the date of registration on the CARINGS Portal. On the said date, the petitioners were well within the outer limit of 110 years cumulatively.
- 16.** The petitioners sought revalidation of the HSR after the respondent no.4 failed to take steps within October 20, 2022, as per Regulation 30(3)(m), when their composite age was 109 years, that is, within limit.
- 17.** On February 16, 2023, much after the petitioners sought revalidation of the HSR, the petitioner no.2 turned 52 years. Thus, the petitioners' composite age became 110 years.

18. On April 13, 2023 when the petitioner no.1 turned 59 years the composite age of the petitioners exceeded 110 years and became 111 years.
19. Learned counsel for the petitioners submits that as per Section 3(2) of the Majority Act, 1875 (for short, “the 1875 Act”), in computing the age of any person, the day on which he was born, is to be included as whole day and he shall be deemed to have attained majority at the beginning of the 18th anniversary of that day.
20. Following such principle, the composite age of the petitioners remained 110 years on and from February 16, 2023 and the age limit as per Regulation 5(4) was only breached on April 13, 2023 when their composite age became 111 years. On the day the petitioners sought revalidation that is on November 17, 2023, it is reiterated the petitioners were within the composite age, being 109 years cumulatively.
21. Regulation 5(4) states that the maximum composite age of a PAP couple has to be 110 years. Regulation 11(6) provides that registration shall continue till the time they have not exceeded the said maximum age and as these provisions state that the PAP would become ineligible “upon attaining the composite age of 110 years”, then the petitioners would be ineligible on the day they would attain 110 years. However, Regulation 11(16) has to be construed in the manner which is reasonable and socially beneficial, harmonious with Regulation 5(4).

- 22.** The bar applies only when the composite age of the PAP couple exceeds 110 years and not upon them attaining 110 years.
- 23.** Regulation 5(9), it is argued, has no application since the petitioners received referral within three years.
- 24.** The rejection of re-adoption by respondent no.2-CARA on June 2, 2023 was perverse and illegal, it is argued. The grounds on which respondent no.4 refuse to recommend the petitioners for re-adoption of the concerned child are invalid.
- 25.** Learned counsel for the petitioners argues that the ground that the petitioners returned the children without counselling is contrary to records as once a disruption case was started under Regulation 14(5), the petitioners are mandated by law to return the siblings to respondent no.6. The petitioners participated in counselling in this regard and documents evidencing the same are annexed at page 36 of the writ petition.
- 26.** The allegation as to use of harsh language with the children is completely perverse and without any shred of evidence. No enquiry in that regard was made by the respondent no.4 when the siblings were in the custody of the petitioners.
- 27.** Insofar as non-revalidation of the HSR is concerned, as per Regulation 5(5), the petitioners were supposed to seek revalidation after a period of three years which ended on October 20, 2022. The petitioners, upon being informed by the concerned respondents, sought revalidation on November 17, 2022 in terms of Regulation 5(8).

28. However, as per Regulation 30(3)(d) and Regulation 30(3)(m), it was the responsibility of the respondent nos.4 and/or 6, the two Specialized Adoption Agencies (SAAs) to ensure the revalidation of HSR prior to the three-year period, which they failed to do.
29. The petitioners or the child willing to be adopted cannot be made to suffer irreparable prejudice, it is argued, on such technicalities.
30. The ground that returning the children is not in their best interest is contrary to records, it is argued, since the younger sibling chose to remain with the petitioners. In any event, none of the two siblings had any problem with the petitioners but with each other, which is on record. Thus, a disruption case in terms of Regulation 14(5) had to be started for which the petitioners were legally obligated to return the siblings.
31. The question of returning the children being in their best interest or not cannot arise.
32. Thus, the CARA act of non-recommendation of the younger sibling for re-adoption via e-mail dated June 3, 2023 is arbitrary and perverse.
33. Lastly, it is argued that the petitioners have acted *bona fide*. The HSR expired on October 20, 2022. The respondent nos. 4 and 6 failed to ensure revalidation within three years. Thus, in terms of Regulation 5(8), after three years, the petitioners sought revalidation on November 17, 2023 when their composite age was 109 years.
34. Even thereafter, on January 4, 2023, the younger sibling was matched with the petitioners by CARA (respondent no.2), and the respondent no.4 was directed to complete all formalities of adoption.

Thereafter, *vide* letter dated January 27, 2023, the respondent no.6 informed the petitioners that the adoption meeting would be conducted for carrying out the entire process. Even thereafter, correspondence was exchanged between January 30, 2023 and February 17, 2023 between the petitioners and the respondent nos. 2 and 4 regarding revalidation HSR. Thus, in the best interest of the child, mere technical grounds of lack of revalidation, that too due to dereliction of duty on the part of the respondent-Authorities, cannot stand in the way of substantive justice.

- 35.** Learned counsel for the respondent no.4 submits that the said respondent was constrained to refuse the request for revalidation of the HSR on several grounds. First, the petitioners being PAPs must first meet the eligibility criteria as set out in Regulation 5(4) of the 2022 Regulations. When the petitioners in the present case had applied for adoption through the designated portal of CARINGS, they were within 110 years. Their HSR was conducted and registration became effective on and from October 21, 2019. Thus, HSR would remain valid till October 21, 2022. Once the HSR is conducted thus, the Specialised Adoption Agency carry out the procedure in terms of Regulation 11 for referring children for adoption and if accepted, carry on pre-adoption foster care for the child and the family. Here, while the HSR was conducted by the SAA of West Bengal (respondent no.4), the procedure under Regulation 11 was carried out by SAA of Odisha as the children referred for adoption were from Odisha.

- 36.** The HSR of the petitioners expired on October 21, 2022. Since the petitioners were already referred the children as per information received by respondent no. 4 on July 13, 2022, no steps to revalidate their HSR before its expiry were taken by respondent no.4, which is only done when no referrals are made. Fresh application for HSR was received from the petitioners again on November 29, 2022 since the petitioners could not adopt and the children had to be returned.
- 37.** CARA, being the respondent no.2, sends regular texts to the registered mobile number of the PAPs as reminder to revalidate the HSR three months prior to its date of expiry. Here, on the date of fresh application for HSR, the composite age of the petitioners had crossed 110 years.
- 38.** Learned counsel for the respondent no.4 points out certain relevant provisions of the Regulations.
- 39.** Regulation 5(9) provides that the seniority of the PAPs is no longer renewed when their composite age crosses the age limit under Regulation 5(4).
- 40.** Under Regulation 11(16) the registration of the PAPs shall continue as long as they do not cross 110 years cumulatively.
- 41.** Under Regulation 10(10), the HSR shall be the basis for adoption of a child from anywhere in India and shall remain valid for three years and must be revalidated or renewed under Regulations 5(8) and 30(3)(m). Under Regulation 30(3)(m), at the time of revalidation it is incumbent upon the SAA to ascertain the eligibility criteria of the PAPs. Therefore, the age limit shall always be a matter of

consideration before proceeding with adoption under the guidelines. If ineligible, the SAA shall inform the District Child Protection Unit, which has been done here. For the above reasons, it was not possible to validate the HSR.

42. Learned counsel argues that the interpretation given to Regulation 5(4) with reference to the Majority Act would defeat the very purpose of the 2022 Regulation. In any event, when the literal construction of the Regulation does not suggest such interpretation, reading the same into the provision by drawing reference from a different statute may not be ideal.
43. It is next contended that the petitioners were governed by the Regulation of 2017 as on the date of their first registration in the year 2019. The Regulations have undergone an amendment in the year 2022 which became effective on and from September 23, 2022. The petitioners, however, are subject to the present Regulations since their HSR expired on October 21, 2022 and no steps were taken by them to ensure its continued validity. Thus, the petitioners cannot be governed under the previous Regulation as their HSR lapsed on October 21, 2022 and the fresh application made on November 29, 2022 shall be governed by the 2022 Regulations.
44. Lastly, it is argued that the petitioners have failed to avail the remedy of appeal under Regulation 62 of the Regulations, 2022.
45. Before entering into the merits of the case, it is required to be kept in mind that the younger sibling, who is sought to be adopted by the PAPs/petitioners, falls under the category of “hard-to-place child”.

The said expression is defined in Section 2(13) of the Adoption Regulation of 2022, framed in exercise of powers conferred under Section 68(c) read with Section 2(3) of the JJ Act. Although the 2017 Adoption Regulations were initially applicable to the petitioners, admittedly, the 2022 Regulations have come into force in the meantime and govern the petitioners.

- 46.** Regulation 2(13) of the 2022 Regulations provides that a hard-to-place child is a child who has not been placed in adoption after going through the procedure as mentioned there. Clauses (a) to (d) mention certain steps for placing the child in adoption with resident Indians or non-resident Indians or Overseas Citizen of India card holders. Clause (e) provides that the child not placed in adoption even after the time-line stipulated in Clauses (a) to (d) shall be categorised as 'hard-to-place'.
- 47.** As the name suggests, such children are already at the risk of not getting a home at all since they have not been placed in adoption even after going through the previous steps contemplated in the Regulations of 2022.
- 48.** The fundamental principles governing adoption have been mentioned in Regulation 3 of the 2022 Regulations which provides that the child's best interests shall be of paramount consideration while processing any adoption placement.
- 49.** In the present situation, the said two provisions, read together, obviate a lenient view to be taken insofar as the applicability of the rigours of the Regulations are concerned.

50. Seen in such context, Regulation 5(4) provides a chart relating to the maximum composite age of a PAP couple or a single PAP vis-à-vis the age of the child. The child sought to be adopted here is around 10 years of age. The maximum composite age of the petitioners was required to be 110 years. Clause (4) of Regulation 5 provides that the age of PAPs *as on the date of the registration* shall be counted for deciding the eligibility of PAPs for children of different age groups.
51. Clause (9) stipulates that the seniority of the PAPs *who have not received a single referral* within three years shall be counted from their date of registration except those who have crossed composite years of 110 years. The said Clause is not applicable to the petitioners, since they had received a referral within the period of three years from registration.
52. Clause (8) of Regulation 5 is also important and provides that the PAPs have to revalidate their HSR (Home Study Report) *after* a period of three years.
53. In the present case, the HSR was uploaded on October 20, 2019 and expired on October 20, 2022.
54. The petitioners applied for revalidation of HSR on November 17, 2022, that is about one month after its expiry.
55. It is relevant to note that the language used in Clause (8) of Regulation 5 is “after a period of three years”. Hence the petitioners, having applied after the said period and within close proximity of the expiry of the same, cannot be said to have been flouted any Regulation.

- 56.** In such context, we also have to look into Regulation 30 of the 2022 Regulations, which provides the functions of SAAs. Regulation 30(3) stipulates the functions of the SAAs towards PAPs. Clause (m) thereof stipulates that every SAA shall complete revalidation of the home study of the PAPs prior to expiration of their validation period and in the event they are not found eligible or suitable to adopt, to refer the HSR to the District Child Protection Unit (DCPU).
- 57.** The said provision imposes the responsibility on the SAA to complete revalidation and only makes it necessary for the PAPs to apply for revalidation after the expiry of three years. Hence, if there were laches, the same would be on the part of the SAAs and not the petitioners.
- 58.** The circumstances of the present case, however, were peculiar insofar as after the two siblings were brought by the petitioners to West Bengal from the SAA of Odisha, the elder sibling was not agreeable to stay with the younger, for which the provisions of Regulation 14(5) were set into motion. The said Regulation provides for the procedure of disruption in in-country adoption. Since the children were brought from Odisha to another State, that is, West Bengal during the adoption process, the relocation of the children was to be coordinated by the SAA in the State where the children were currently residing and the State of origin that is respondent nos. 4 and 5 respectively. Thus, the responsibility in that regard was also on the SAAs and not the petitioners. Hence, on a composite reading of the said provisions, it cannot be said that there were any laches on

the part of the PAPs at all. Importantly, even when the application for revalidation was made by the PAPs, their composite age was 109 years.

- 59.** There cannot be any dichotomy in interpretation of Regulation 5(4) insofar as the age limits are concerned. The stipulation of law is that the maximum composite age of the PAP couple is to be seen. If the maximum composite age is 110 years as in the present case, it has to be read in the context of the prudence of a normal man. The age of a single PAP, for example, if stipulated to be a maximum of 55 years, continues till the PAP completes his/her 55th year and enters into the 56th year after birth.
- 60.** On similar logic, the cumulative individual ages of the PAPs as a couple have to be considered to ascertain whether their composite age has crossed the domain of 110 years and reached into the 111th year. Having satisfied such tests during the relevant period, while being registered and at the time of applying for revalidation of HSR, the present petitioners cannot be said to have any shortcoming on such count as well.
- 61.** Regulation 10(10) provides that the HSR shall remain valid for three years and shall be the basis for adoption of a child by the PAPs from anywhere in the country. The said provisions, obviously, has to be read in the context of the above discussions.
- 62.** Another hurdle which might have come in the way of the petitioners is Regulation 11(16) which provides that the registration of PAPs shall continue till the time they have not exceeded the maximum

composite age as provided in Regulation 5(4) and subject to revalidation of the HSR in every three years.

- 63.** The said provision has to be seen in proper perspective. One of the possible interpretations is that the registration expires if the HSR is not revalidated within three years, the other is that the said expiry is only tentative and gets revived once the revalidation is done. In view of the language of Clause (16), which is couched in positive language, the registration shall continue till the time they have not exceeded the composite years but subject to revalidation of the HSR in every three years. Once the revalidation is done, the HSR has to relate back to its original date, thereby reviving the eligible age of the PAPs.
- 64.** There is another reason for such liberal interpretation, apart from the fact that the child is a hard-to-place child.
- 65.** Clause (14) of Regulation 11 provides that in case the PAPs do not accept the reserved child, they will be relegated to the bottom of the seniority list as on that date and may avail a fresh chance when seniority becomes due.
- 66.** Relegating the present petitioners to the same status as PAPs who do not accept a reserved child would be the essential result if a strict interpretation is imparted to Clause 16.
- 67.** However, the petitioners, who are eager to adopt the younger child and the child is also agreeable to come to the petitioners cannot be placed on an equal footing as a PAP couple who do not accept the reserved child. Arguing that the present petitioners should be relegated to the bottom of the seniority list, which would be the

essential fall-out of refusing adoption at the present stage, would be unfair, to say the least on such score.

68. Secondly, Clause (13) of Regulation 11 provides that if grounds of rejection after the enquiry are found to be due to systemic error or on non-justiciable reasons, seniority of the PAPs shall be retained.
69. Read in conjunction with the duty of the SAAs for revalidation of the HSR under Regulation 30(3)(m), it is essentially to be looked into from the perspective of an error on the part of the authorities which is on the same footing as a systemic error or a non-justiciable reason.
70. Thus, the rigour of Regulation 11(16) has to be mellowed down for the petitioners.
71. In any event, Regulation 5 (8) necessitates PAPs to revalidate their HSR *after* a period of three years, which the petitioners did.
72. The JJ Act and the Adoption Regulations themselves have been formulated *inter alia* to govern procedure of adoption and not to set up impediments and hindrances to it. The underlying purpose is to facilitate that children without a home get one and couples or single PAPs wanting to provide such home and a family-bond to such children are provided with an opportunity to do so.
73. In the present case, the petitioners and the younger child have stayed together and are will to continue the bond for their lifetimes.
74. Seen from such perspective, nothing in the Act or the Regulations prevents the petitioners from having a valid adoption of the younger sibling whom they want to adopt and who is eager to come to them. We also cannot rule out the bond which might have started

developing between the petitioners and the younger sibling, due to the short but welcome stay of the said child with the petitioners.

- 75.** Accordingly, WPA No. 14180 of 2023 is allowed on contest, thereby setting aside the communications made by e-mail dated June 2, 2023 by the respondent no. 2 and the e-mail dated March 27, 2023 sent by respondent no.4 and directing the respondent no.4 to ensure that the HSR of the petitioners is revalidated at the earliest, positively within a month from date. Immediately thereafter, the respondent-Authorities shall take expeditious steps to complete the process of adoption to ensure that the younger sibling who is willing to come to the petitioners is given in adoption to the petitioners/PAPs, completing the entire exercise positively by December 31, 2023.
- 76.** There will be no order as to costs.
- 77.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)